Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 84-6859

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

RONALD DERAY SKIPPER,
Petitioner,

v.

STATE OF SOUTH CAROLINA,
Respondent.

On Writ Of Certiorari To The Supreme Court Of South Carolina

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JUNE 3, 1985
CERTIORARI GRANTED OCTOBER 15, 1985

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CHRONOLOGY OF RELEVANT EVENTS

November 6, 1982:	Petitioner served with arrest warrant, taken into custody.
January 13, 1983:	Petitioner indicted for murder and criminal sexual conduct in the first degree.
June 20, 1983:	Commencement of petitioner's trial in Horry County Court of General Sessions.
June 24, 1983:	Petitioner convicted as charged.
June 27, 1983:	Beginning of sentencing hearing before trial jury.
June 28, 1983:	Jury recommends death sentence; petitioner sentenced to death.
July 15, 1983:	Trial judge files Death Penalty Sentencing Report with South Carolina Supreme Court.
February 12, 1985:	Conviction and sentence of death affirmed by South Carolina Supreme Court, *State* v. *Skipper*, ___ S.C. ____, 328 S.E.2d 58 (1985).
April 3, 1985:	Timely petition for rehearing denied without opinion by South Carolina Supreme Court.

April 6, 1985:	Stay of execution of sentence of death granted by South Carolina Supreme Court, pending filing and disposition of petition for writ of certiorari in the United States Supreme Court.
June 3, 1985:	Petition for writ of certiorari and motion for leave to proceed *in forma pauperis* filed in the United States Supreme Court.
October 15, 1985:	Motion for leave to proceed *in forma pauperis* and writ of certiorari granted, limited to Question I presented by the petition.

State v. Ronald DeRay Skipper, Sentencing Proceeding, Horry County Court of General Sessions, June 27, 1983.

[Tr. 1000]

* * * *

THE COURT: Yes, sir. At this time I need to determine from you, Mr. Dusenbury, each statutory mitigating circumstance which you contend is involved.

MR. DUSENBURY: Statutory circumstance 16-3-20 (B)(3).

THE COURT: Give me that again?

MR. DUSENBURY: 16-3-30 (D)(3).

THE COURT: Do you have any others.

MR. DUSENBURY: We are going to—The general mitigating circumstances, of course, will be the biographical life of the defendant, his ability to be rehabilitated. In that regard we have subpoenaed two jail guards, and Mrs. Carolyn Henry who is a visitor in the jail on a regular basis, and has conferred with the defendant once a week since his confinement. Although the State—The Supreme Court in Truesdale and I believe Koon, which I believe you Honor is familiar with, states these—Truesdale admonished counsel not for defendant to offer such testimony because of the ability of the defendant to adjust to a life sentence or to extended confinement in custody, and the testimony of jailers on that point, Miss Carolyn Henry, was not relevant. The **[Tr. 1001]** Court stating that only the conduct of the defendant or the testimony relating to mitigating circumstances of the crime itself. We think—

THE COURT: If it goes to characteristics, it would be admissible. I will rule on that at the proper time, if there is any question.

* * * *

(The following took place within the presence of the jury.)

RONALD DERAY SKIPPER, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DUSENBURY:

* * * *

[Tr. 1032] Q. Did you ever get a GED?

A. Yes, sir.

Q. When did you get that?

A. When I was incarcerated.

Q. Was this on the statutory charges?

A. Yes, sir.

Q. By the way, what were you sentenced on at that time? What was your age when that offense was committed?

A. Sentence not to exceed six years, YOA.

Q. YOA is what?

* * * *

What he would want to do with his employment skills is not relevant.

THE COURT: I will permit the question.

A. Well, like I say, I am a skilled mechanic. I would want [Tr. 1034] to work.

Q. What you want to do with the money? Why did you form this idea?

A. My understanding from Chief Warren Baker [sic] of the South Carolina Supreme Court—I mean United States Supreme Court, if I am not mistaken, is trying to work out some kind of job situation with people with long terms so they can earn minimum wage and support their family.

Q. What would you want to do with the money you earned from this?

A. I would like to help my children.

Q. What specific ways?

A. Like for instance a good education. If not an expensive college, at least technical college or something like Francis Marion or Coastal.

Q. How many children do you have?

A. I have three

* * * *

[Tr. 1035] Q. By the way, with reference to your adjustment to prison when you were first incarcerated here in the Horry County jail, did you have any difficulties at first?

A. You always have difficulties when you first get locked up.

Q. Did you make any complaints right at the start?

A. Yes, sir, quite a few.

Q. What specifically did they involve?

A. Well, they locked me up on Saturday night. I was kicking the door because I wanted to make a phone call. I had some cigarettes and they wouldn't let me have them. I had some stuff like a change of clothes, shampoo. They wouldn't let me have them.

Q. Did your wife come see you?

A. Yes, sir. They wouldn't let her see me. That was to my knowledge.

Q. After that initial period, what has been your adjustment?

A. I learned to live with it.

Q. How do you get along with the jailers?

A. I try to get along the best I can.

Q. What has been your experience with specific jailers?

A. I never had any trouble out of them. I mean everybody [**Tr. 1036**] had difficulties, but I like them. I get along with them. They are good to me. I try to be good to them.

Q. If you received a life sentence and were in a prison population, what type adjustment do you feel you could make to a life sentence?

A. I would want to do my time and get out.

Q. When would you expect to get out?

A. Twenty years is a life sentence for parole, but there is no guarantee for parole then.

* * * *

[**Tr. 1040**] Q. I believe the testimony has been you were arrested on November 6, 1982?

A. Yes, sir, I believe it was.

Q. Have you been continuously in jail since then?

A. I have been in jail ever since then.

Q. Do you have any dependence now on any type drug or alcohol?

A. No. sir.

CROSS EXAMINATION OF RONALD DERAY SKIPPER BY MR. DUNN

* * * *

[Tr. 1065] Q. You are strong enough to grab somebody around the neck and choke the life out of them, aren't you?

A. I reckon I am.

Q. And bust the bone in the neck, you are strong enough to do that, aren't you?

A. I don't know, sir.

Q. You are the fellow that when you got to the Horry County jail went to kicking the cell, right?

A. Yes, Sir.

[Tr. 1066] Q. That's you. that's the kind of fellow you are, but you are nice today, right?

A. (No response.)

MR. DUNN: I have no further questions.

MR. DUSENBURY: Come down, Mr. Skipper.

* * * *

(The following took place within the presence of the jury.)

PAMELA ANDERSON SKIPPER, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DUSENBURY:

* * * *

[Tr. 1071] Q. How long ago did you first meet Ronny Skipper?

A. September will make it three years ago.

Q. After you all met, how steady did you go together before you were married?

A. It was constantly from the first day we met.

* * * *

[Tr. 1072] Q. What problems developed, if any? Did any problems develop?

A. Well, when we first started dating—Well, like I said, we were constantly together. Ronny was having a lot of trouble sleeping at night. He would wake up and he would be crying and saying, "No, no, please don't," and all this type thing. I tried to ask him, you know, what was wrong. It was a couple of months before he would actually tell me what it was. I guess he didn't feel like at first he could really confide in me what was bothering him. One night after that, after he had been constantly crying out in his sleep and all this, I got him calmed down, and I asked him what was wrong.

MR. DUNN: Object to any conversation between this lady and the defendant.

THE COURT: That would be admissible.

Q. Go ahead.

A. Anyway, he told me from the beginning that he had been in prison at one time and told me the circumstances it [Tr. 1073] was for. I told him it made no difference to me. People make mistakes, whatever. He told me he had been raped while he was in prison, and that he felt some type guilt in himself because of what had happened. He didn't really tell me any details. He said it had happened with several men. Like I said, he really felt bad about it.

Q. Where did he say it happened?

A. When he was in prison. I'm not sure. I know he was at McDougal once and in Columbia once.

Q. What part of the prison area?

A. In the laundry area.

Q. What did he say this had done to his—You said it gave him a guilt feeling?

A. Yes, sir. He advised me if I felt like it made me feel any difference toward him for me to go my own way, you know, because he really felt bad about it. I asked him did he tell anybody at the prison. He said it would have done no good. I asked him if he had talked to somebody for some type of counseling or anything. He said he didn't really know what to do about it. I really didn't know what to do about it.

* * * *

[Tr. 1095] Q. Have you had occasion since he has been arrested to visit him on a regular basis?

A. I came down the day after he was arrested, after the family came and told me about it. They wouldn't let me see him. They wouldn't let him have any of the things I left for him.

Q. Let me ask you this. Did that upset him and all?

A. Yes, sir, it did. It upset us both.

Q. How long was it before they lifted that?

A. I'm not quite sure they did. I came down not the following weekend, but the next weekend and they still wouldn't let me see him. Nobody would tell me where he was. Nobody would tell me who I should contact that could tell me where he was. I said, "When can I see him?"

They said, "We don't know."

I said, "Who can tell me?"

"We don't know.

I said, "Well, somebody has to know." They wouldn't tell me anything.

[Tr. 1096] Q. Now, since that period when you and Ronny were upset, I ask you whether or not what type of adjustment he made to prison life?

A. He has made a good adjustment.

Q. What is your opinion as to whether or not he could be—

MR. DUNN: Object to, "What is your opinion." It can't be relevant. She is not qualified as an expert of any kind.

THE COURT: Mr. Dusenbury?

MR. DUSENBURY: I think she is well qualified.

THE COURT: Let's hear the rest of your question and then I will decide.

Q. What is your opinion from your knowledge of Ronny and his reaction to authority under the present conditions, and under prison conditions over an extended period of time; what is your opinion as to whether he could make a good adjustment?

THE COURT: Objection sustained.

MR. DUSENBURY: Your Honor, we would like to take up a matter of law outside the presence of the jury.

THE COURT: I refer you to the case of State versus Koon. I am familiar with the law. If you would like to put something on the record, you may do so at this time, or you may do so at the next recess.

MR. DUSENBURY: I would like to put it on the record at this time.

THE COURT: Ladies and gentlemen, I would ask you to [Tr. 1097] please go to the jury room.

(The following took place outside the presence of the jury.)

THE COURT: In the case of State versus Koon it says, "Appellate next alleges that the trial Court erred by excluding certain psychiatric evidence concerning his future adoptability to jail. We disagree. The penalty phase of a capital murder case is concerned with the existence of nonexistence of mitigating or aggravating circumstances involved in or arising out of the murder, not the convicted murderer's adoptability to prison life."

MR. DUSENBURY: Your Honor, we have under subpoena two jailers, Mr. Fritz Collins, Mr. Ronny Johnson, and a regular visitor Carolyn Henry to testify that the defendant has made a good adjustment.

THE COURT: Whether he can or cannot, State versus Koon says it is not an issue in this case.

MR. DUSENBURY: Even if they state after this initial period he has made a good adjustment?

THE COURT: Read State versus Koon. That is not an issue, whether he can adjust or not adjust.

MR. DUSENBURY: So none of these witnesses will be permitted to testify?

THE COURT: I don't know what they are going to say, but I am telling you they will not be permitted to testify [Tr 1098] about his adjustability to prison life.

MR. DUSENBURY: That is the only thing we would offer them for. Thank you, your Honor.

THE COURT: Anything further?

MR. DUSENBURY: No, sir.

* * * *

[Tr. 1118] (In the presence of the jury:)

HAZEL F. OLIVER,

being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DUSENBURY:

* * * *

[Tr. 1119] Q. With regard to Ronny as a child; what was your relationship with him in his early childhood? What was your observation of him.?

A. Ronny was a real sweet child. He had always been. He had been real nice to me. Any time I needed something done, if he was around he would work on my car. If I needed to have someone go with me to hang my draperies, he would say, "Mama, I'll go with you. Just let me know." He was always real helpful. He was a real sweet child and a kind child.

Q. What about his work? Did you have occasion to observe his commitment to his work or his willingness to work?

A. He always worked when a job was available. My husband was a contractor. Of course I had Hazel's Interiors. We do try to keep the family working. When they didn't have jobs other places, we always made a job for them.

Q. What is your observation of Ronny's relationship with [Tr. 1120] his relatives, with your kin and his kin?

A. We always got along. We never had no problems with Ronny, not family.

Q. What about his relationship with his friends, did you have any occasion to observe that?

A. Well, Ronny had a lot of friends. They weren't just a friend today and gone tomorrow. They always hung around from friends he went to school with. In fact they still call and ask about him.

Q. Did you ever understand the reason why Ronny ran away twice when he was fifteen and sixteen?

A. Not really I didn't, but I knew something had to be wrong. He couldn't have been happy at home.

MR. DUSENBURY: Your Honor, I believe you previously ruled on adjustment?

THE COURT: Yes, sir.

MR. DUSENBURY: Answer any questions the Solicitor has.

MR. DUNN: I don't have any questions, ma'am.

* * * *

June 28, 1983. Continuation of sentencing proceedings, *State v. Skipper*. Jury argument for the state by Solicitor Dunn:

* * * *

[Tr. 1201] You know what he is. By your verdict he is a convicted murderer. A convicted murderer. By his record what is he? He is a four time loser. Four times. You heard the old saying three times and you are out in baseball. He is a four time loser. I will go into that in a little more detail.

What kind of fellow is he? He told you, not me, something about an unlawful weapon. He was the lookout man in a stealing case when he was very young. Been in

trouble all his life in some way or other. His wife said he told her—I didn't hear anybody else say it. He told her—Talking [Tr. 1202] about his wife, remember the marriage license where he was going to marry this other girl. He got that downstairs in the Probate Court. Anyway he said, he told her, that he had been raped in prison. With his history and what you know about him, who do you think the raper was and who do you think the rapee was? And if given the opportunity again with this four time sexual abusing loser, who do you think will get raped in prison? Will it be Ronald Skipper, big old robust Ronald Skipper who knocks woman in the side of the head, or will it be some little boy in prison?

* * * *

[Tr. 1209] These are the mitigating circumstances submitted by the defendant. One is statutory in the law that you are to consider. The others are mitigating circumstances that if they are supported by the evidence that you may wish to consider.

* * * *

[Tr. 1213] That the defendant has shown significant and positive adjustments to confinement and education and employment skills that enable him to be a stable and productive prisoner. Didn't he admit kicking on the bars over there? That's the kind of prisoner he is. Kicking on the bar. Kicking on the bars. He is the kind of prisoner he says got raped. Isn't it interesting, he says he got raped in prison, but what was he up there for when says he got raped? Criminal sexual conduct on a thirteen year old girl. I submit to you that is a figment of either his or his wife's imagination. Be that as it may.

* * * *

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, ... *Respondent,*

v.

Ronald DeRay Skipper, ... *Appellant.*

Appeal From Horry County
Marion H. Kinon, Circuit Judge

Opinion No. 22234
Heard November 12, 1984—Filed February 12, 1985

AFFIRMED

Richard G. Dusenbury, of Florence, and South Carolina Office of Appellate Defense, of Columbia, for Appellant.

Attorney General T. Travis Medlock, Assistant Attorneys General Harold M. Coombs, Jr., and Charles H. Richardson, all of Columbia; and Solicitor James O. Dunn, of Conway, for Respondent.

CHANDLER, A.J.: Appellant was convicted of murder and first degree criminal sexual conduct (rape), and sentenced to death and thirty years imprisonment.

We consolidate his appeal and our mandatory review of the death sentence, and affirm.

FACTS

On the evening of November 1, 1982, Maryanne Wray (victim) went with two friends to the Rainy Day Inn in Garden City. Around 11:00 p.m. she left with Appellant,

telling her friends that they were going to the beach. Later her friends saw Appellant and the victim on the beach, embracing. When she did not return to the Inn, the friends left at 2:00 a.m.

The victim's body was found the next morning at a house near the Garden City pier; she had been strangled.

Appellant was arrested on November 2 and, on the basis of a photographic and live lineup, charged with the crimes.

ISSUES

Appellant contends numerous reversible errors were committed in the (I) jury selection, (II) guilt and (III) sentencing phases of his trial.

I. JURY SELECTION

First, Appellant contends the trial judge erred in refusing his motion to quash the jury venire. We disagree.

Appellant argues that S.C. Code Ann. § 14-7-850 (1976 & Supp. 1983), in providing optional jury service to practicing physicians, lawyers, men and women over 65 and others, systematically excludes certain categories. Specifically, he contends that input from physician-jurors would contribute to the solution of medical and scientific issues before the jury.

The exception is without merit. The statute does not exclude or disqualify any category of citizens. Rather, it grants an option which the juror alone may exercise. *State* v. *Graham*, 79 S.C. 116, 60 S.E. 131 (1908).

There was no systematic exclusion of jurors.

Next, Appellant contends the excusal for cause of two jurors was improper. We disagree.

Juror Madelyn Jane Antil (Antil) was under voir dire examination when the Court recessed for lunch. During the lunch hour she went to the trial judge's chambers and advised him that she was nervous because of her awareness of Appellant's prior convictions. The judge then brought in Antil's mother who advised him of her daughter's serious medical problems.

After recess the judge announced his excusal of Antil for cause. When Appellant's counsel objected, the judge gave a detailed explanation for his ruling. He stated that, commencing on the previous day, he had observed Antil closely. She appeared to be in somewhat of a stupor, her speech was slurred, her eyes fluttered and were closed during part of her testimony. She was extremely nervous and had difficulty answering questions.

From these observations and what he had learned at chambers, the judge concluded Antil was not competent to serve and stated:

> I have a duty to this defendant to assure him of a fair and impartial jury. I feel it would be to the best interest of the defendant that this juror be excused.

The actions of the trial judge were both correct and proper. "It is the duty of the trial judge to assure himself that each and every prospective juror is unbiased, fair and impartial," *State* v. *Holland*, 261 S.C. 488, 495, 201 S.E.2d 118 (1973), and "[t]he method and scope of *voir dire* is within the trial court's discretion." *State* v. *Thompson*, 278 S.C. 1, 10, 292 S.E.2d 581 (1982), cert. den. 456 U.S. 938, 102 S.Ct. 1996, 72 L.Ed.2d 458.

The second juror, Carolyn W. Livingston (Livingston), was excused by the Court on the ground of her opposition to the death penalty. Appellant contends her excusal was in violation of *Witherspoon* v. *Illinois*, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.776 (1968). We disagree.

Although in an isolated portion of her testimony she appeared to agree that under certain circumstances she could agree to the death penalty, Livingston stated categorically that she could not vote to impose the death penalty:

> Q. To boil it down to just one question. Based on your views of life, all that you feel, your upbringing and everything, could you really *in any case* sign your name on a piece of paper to put somebody in the electric chair? *Could you? Anybody?* (Emphasis supplied).
>
> A. No, I don't. No. Because I don't want to live with it.

As in *State* v. *Plath*, 281 S.C. 1, 6, 313 S.E.2d 619 (1984), we find "[this response] fully warranted disqualification of the juror."

"The entire colloquy in voir dire, and not isolated portions, determines the qualifications of jurors to serve." *State* v. *Truesdale*, Davis' Advance Sheets, Op. No. 22176, filed October 31, 1984.

II. GUILT PHASE

Appellant contends that during jury deliveration of the guilt phase, an alleged ex parte communication between the trial judge and Brian Gibbes, a state's attorney, entitled Appellant to a mistrial. We disagree.

From the record it is clear that the incident complained of was not a communication within the definition and application of the term "ex parte."

According to the testimony, Mr. Gibbes, while at chambers and in the presence of the trial judge's law clerk, was requested by the judge to submit authority on a point of law. At that moment Appellant's counsel, Mr. Dusenbury, entered. He contends Mr. Gibbes was pointing to

underlying sections of some opinions which constituted an ex parte communication and grounds for mistrial.

The trial judge's explanation of what occurred is set forth in this colloquy:

> *The Court:* . . . Mr. Dusenbury, what happened is, at the close of court on Friday he (Mr. Gibbes) came into chambers. I said, 'If you have any authority on that particular proposition, please submit it to me so I can study it.'
>
> Before I had a chance to send for you to ask likewise, you walked in and I told you if you had any authority to please present it in order to give me a chance to do some studying over the weekend, which I did. (Parenthesis supplied).

Appellant's contention that the alleged ex parte conference improperly influenced the trial judge's later ruling in the sentencing phase on admissibility of certain evidence is conjecture.

While ex parte communications are grossly improper and must be dealt with accordingly, there is no evidence here of any substantive discussion of Appellant's trial, only a request by the Court for legal authorities on points of law.

III. SENTENCING PHASE

First, Appellant contends error was committed in the admission of details of other crimes, and of evidence in aggravation not delineated in the death penalty statute. Specifically, he argues that details incident to Appellant's rape of State's witness, Sue Stuckey, were inadmissible. We disagree.

The initial disclosure of Appellant's rape of Stuckey occurred during his counsel's opening statement. As a trial strategy, counsel informed the jury that Appellant had been convicted of three sexual crimes, including the rape of Stuckey.

In the guilt phase Appellant conceded that conviction for rape of Stuckey was admissible under *State* v. *Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). His objection is confined to the details of her rape testified to by Stuckey in the sentencing phase.

In the sentencing phase of a capital case it is essential that the jury have for consideration all pertinent information about the defendant on trial for his life. *Barefoot* v. *Estelle*, ____ U.S. ____, 103 S.Ct. 3383, 3396, 77 L.Ed. 1090, 1107 (1983), cited in *State* v. *Plath*, 281 S.C. 1, 313 S.E.2d 619 (1984).

"What is essential is that the jury have before it all possible relevant information about the individual defendant whose fate it must determine." *Jurek* v. *Texas*, 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929, 941 (1976).

Appellant's contention that, in the sentencing phase, evidence of non-statutory aggravating circumstances is inadmissible is refuted by numerous decisions of this Court, the United States Supreme Court and courts of other jurisdictions. *Barclay* v. *Florida*, ____ U.S. ____, 103 S.Ct. 3418, 77 L.Ed.2d 1134 (1983); *Gregg* v. *Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976); *Jurek* v. *Texas*, *supra*; *State* v. *Shaw*, 273 S.C. 194, 255 S.E.2d 799 (1979), cert. den. 444 U.S. 957, 100 S.Ct. 437, 62 L.Ed.2d 329; *State* v. *Koon*, 278 S.C. 528, 298 S.E.2d 769 (1982), app. after rem. Davis' Advance Sheets, Op. No. 22075, Filed April 3, 1984; *State* v. *Plath*, 277 S.C. 126, 284 S.E.2d 221 (1981), app. after rem. 281 S.C. 1, 313

S.E.2d 619 (1984); *Barfield* v. *Harris*, 719 F.2d 962 (4th Cir. 1984).

Here, the trial judge ruled that circumstances of prior offenses were admissible only in reference to characteristics of Appellant. Evidence of such circumstances was properly admitted.

Next, Appellant charges error in refusal of the trial judge to permit testimony of Appellant's adjustment to prison life. We disagree.

The trial judge properly refused to admit evidence of Appellant's *future* adaptability to prison life. *State* v. *Koon*, *supra*. However, evidence of his past adaptability was admitted through testimony of his former wife, his mother and his own testimony. This contention is without merit.

Appellant next contends that the Solicitor's final argument was an appeal to the passion and prejudice of the jury. We disagree.

The propriety of jury argument rests in the sound discretion of the trial judge and, absent an abuse amounting to an error of law, will not be disturbed. *State* v. *Durden*, 264 S.C. 86, 212 S.E.2d 587 (1974); *State* v. *Pitts*, 256 S.C. 420; 182 S.E.2d 138 (1971).

We find from a review of the record, that the portions of the Solicitor's argument complained of do not constitute error when applied to the decisions of our Court.

Finally, Appellant, citing *State* v. *Stewart*, ____ S.C. ____, 320 S.E.2d 447 (1984), contends the trial judge erred in failing to give a jury instruction that details of prior convictions could only be considered as evidence of his characteristics, and could not be used as proof of the statutory aggravating circumstance of rape. We disagree.

In *Stewart* we held under the facts of that case that such a limiting instruction must be given. However, our holding was not intended to require the instruction where, as here, the statutory aggravating circumstance relied upon by the State in the sentencing phase has been proven beyond a reasonable doubt in the guilt phase.

This case is distinguishable from *Stewart*. The test to be applied is whether failure to give the charge is prejudicial to the defendant. Where, as here, the State's alleged statutory aggravating circumstance has been established in the guilt phase by Appellant's conviction of rape, no prejudice resulted to him from failure to give the limiting charge to the jury in the sentencing phase.

Indeed, in the sentencing phase of the State introduced no evidence of the crime of rape additional to that in the guilt phase, relying wholly upon the Court's granting of its motion "to introduce into the punishment phase of this trial all evidence previously admitted into the guilt phase of the trial."

Accordingly, we hold that where the defendant has not been convicted in the guilt phase of the crime relied upon by the State as the statutory aggravating circumstance, the limiting instruction must be given when the State introduces evidence of details of prior acts or crimes. In those cases the jury must be charged that such evidence can be considered only as to the defendant's characteristics, and not as proof of the alleged statutory aggravating circumstance.

Appellant's reliance upon *Stewart* is misplaced.

PROPORTIONALITY REVIEW

Pursuant to § 16-3-25(C)(3), we have reviewed the other death penalty cases in this State on the question of

proportionality. *State* v. *Shaw and Veach*, 273 S.C. 194, 255 S.E.2d 799 (1979).

We find the sentence is not excessive or disproportionate to that imposed in similar cases. The death penalty is fully justified by the evidence of this case.

AFFIRMED.

LITTLEJOHN, C.J., NESS, GREGORY and HARWELL, JJ., concur.

THE SUPREME COURT OF SOUTH CAROLINA

RICHARD G. DUSENBURY, Esquire
P.O. Box 555
Florence, South Carolina 29501

Re: The State v. Ronald DeRay Skipper

Dear Mr. Dusenbury:

The Court has refused your Petition for Rehearing in the above case in the following Order:

"Petition Denied.

s/ BRUCE LITTLEJOHN, C.J.
s/ J. B. NESS, A.J.
s/ GEORGE T. GREGORY, JR, A.J.
s/ DAVID W. HARWELL, A.J.
s/ A. LEE CHANDLER, A.J.

April 3, 1985."

SUPREME COURT OF THE UNITED STATES

No. 84-6859

RONALD DERAY SKIPPER,

Petitioner

v.

SOUTH CAROLINA

On PETITION FOR WRIT OF CERTIORARI TO the COURT OF THE STATE OF SOUTH CAROLINA

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 15, 1985